

## **KLAFTER OLSEN & LESSER LLP**

Klafter Olsen & Lesser LLP is a nationally recognized law firm with experience in a wide variety of litigation matters including securities, breach of fiduciary duty, wage and hour, civil rights, consumer, and products liability actions. Its attorneys have been involved in leading cases in all of these areas and have received recognition for their efforts from courts, professional organizations and peers for their professionalism and results. The Firm has successfully litigated cases from one end of the country to the other and its attorneys are admitted in multiple state courts and dozens of federal courts.

The present firm is the successor to Klafter & Olsen LLP which was founded in June 2003 by Jeffrey Klafter and Kurt Olsen. In August 2008, Seth Lesser joined to form the present firm. The Firm has offices in New York, Washington, D.C., and New Jersey. Together, the Firm's principals bring over seventy years of combined experience representing plaintiffs and defendants to the practice.

The Firm's philosophy is to aggressively prosecute select actions as opposed to a "volume" type operation. The Firm provides its clients with the full spectrum of litigation services including: (i) factual investigation, forensic accounting, and legal analysis; (ii) communications advising the client of the merits of the case, developments in the litigation, and settlement issues; and (iii) advisory services on an "as needed" basis on both case specific and general litigation matters.

The attorneys in the Firm have obtained well over a half a billion dollars in settlements in the cases in which they have served as lead lawyers. These results have been obtained in a wide variety of individual and class action contexts. One federal judge recently stated on the record in open court to one of the Firm's attorneys that "the court already held that class counsel was adequate in the context of class certification. But more than just adequate, class counsel's performance in this case has been exemplary."

### **Securities Litigation**

In recent years, the Firm has acted as a lead counsel in multiple securities class actions in which nearly \$60 million has been recovered:



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- *In re SmarTalk Teleservices Inc. Securities Litigation*, MDL Docket No. 00-1315 (S.D. Ohio) (\$27.1 million)
- *In re Ashworth, Inc. Securities Litigation*, Master File No. 99cv0121-L (JFS) (S.D. Cal.) (\$15.25 million settlement)
- *In re Eaton Vance Corporation Securities Litigation*, Civil Action No. 01-10911-EFH (D. Mass.) (\$10.5 million settlement)
- *In re InfoSonics Corp. Sec. Litigation*, Case No. 06cv1231 BTM(WMC) (S.D. Cal.) (\$3.8 million settlement)
- *In re Viisage Technologies, Inc. Securities Litigation*, Civil Action No. 05-cv-10438 – MLW (D. Mass.) (\$2.3 million settlement)

The Firm also has had significant roles in the prosecution of *In re IBM Corp. Securities Litigation*, No. 05 Civ. 6279 (AKH) (S.D.N.Y.) (\$20 million settlement), *In Re American Business Financial Services, Inc. Noteholders Litigation*, No. 05-232 (ED Pa.) (\$16.75 million settlement); and *In re Countrywide Financial Corporation Securities Litigation*, No. 2:07-cv-05295 (MRP-MAN) (C.D. Cal.) (\$624 million settlement).

The Firm currently has leadership roles the following securities class actions: *Montgomery v. Bank of America Corp. et al.*, No. 10-cv-00440 (LK) and *Janbay v. Canadian Solar, Inc. et al.*, No. 1:10-cv-045430 (RWS).

In addition to leading securities class actions, the Firm was selected by CompuDyne Corporation to represent it in pursuing its claims against individuals and entities who illegally sold the Company's stock short in advance of a \$30 million private placement, and achieved a \$4.8 million settlement with certain of the short-sellers.

### **Breach of Fiduciary Duty and Related Litigation**

The Firm is also active in pursuing claims for breach of fiduciary duty against corporate officers or directors on behalf of shareholders including the following:

- The Firm has been retained by the Post-Confirmation Equity Subcommittee in the bankruptcy of a public company, Superior



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Offshore International, Inc., to prosecute fiduciary duty claims against Superior's former officers and directors and has brought suit in the United States Bankruptcy Court for the Southern District of Texas against four senior officers of the company for waste of corporate assets, insider trading and causing the company's bankruptcy;

- The Firm has been retained by the Liquidating Trust of Debtor PTMS Liquidating Corp. (f/k/a ProxyMed and MedAvant) and has brought suit in the United States Bankruptcy Court for the District of Delaware for breach of fiduciary duty and fraud against General Atlantic, LLC and Braden Kelly for causing the demise of the Company
- The Firm is sole counsel to the former common shareholders of Living Independently Group, Inc. in a class action pending in the Court of Chancery of the State of Delaware seeking damages for breaches of fiduciary duty by its former directors and Chief Operating Officer that resulted in the company being acquired by General Electric Company at a bargain basement price which afforded no consideration to the holders of its common share.
- The firm is co-lead counsel in a class action also pending in the Court of Chancery of the State of Delaware asserting that the conversion of the IMH Secured Loan Fund into IMH Financial Corp. was done in breach of fiduciary duties and contractual rights owed to the Unitholders in the Fund.

### **Consumer and Commercial Law Litigation**

Klafter Olsen & Lesser LLP has extensive experience in the areas of complex commercial and consumer law. Whether representing individuals or business and whether through class or individual actions, the firm's attorneys have recouped hundreds of millions of dollars for its clients in these areas.

The Firm's attorneys have been lead and co-lead counsel in major class action and federal Multi-District Litigation proceedings that successfully obtained recompense from banks, insurance companies, mortgage lenders, appraisers and title insurers, as well as rental companies, gasoline companies, automobile manufacturers, computer companies, and many others. Seth Lesser has been awarded the



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“Consumer Advocate of the Year” award by the National Association of Consumer Lawyers. One of his most recent successes involved obtaining over \$100 million – 100% of individual’s out-of-pocket damages – for New Jersey consumers who paid hidden usurious interest in *Perez v. Rent-a-Center, Inc.*, Docket No. CAM-L-21-03 (Sup. Ct. N.J.), for victims of mortgage fraud, and for compelling a bank to refund interest charges improperly calculated for commercial borrowers.

### **Wage & Hour Litigation**

Klafter Olsen & Lesser LLP has a strong national reputation for helping employees obtain the overtime pay and other benefits to which they are entitled under the Federal Fair Labor Standards Act (FLSA) and comparable state laws. Its lawyers have successfully handled over 40 federal Fair Labor Standards Act cases and have obtained settlements worth tens of millions of dollars in class, collective and individual cases against defendants that have included Fortune 100 and other companies that have ranged from major retailers to nationwide financial institutions.

KOL represents workers across the country when they are denied overtime and subjected to other wage violations. These include misclassifying employees as exempt from being paid overtime under the FLSA and state wage claim, failing to credit employees for all hours they have worked and failing to pay wages for time spent required by an employer to prepare for or wind up a workday. KOL has been appointed class counsel in numerous such cases. See, e.g., *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 165 (S.D.N.Y. 2008) (recognizing counsel as “experience[d] in handling wage and hour class actions and [having] knowledge of the applicable law” in being appointed class counsel) (case settled for \$3.5 million); *Herring v. Hewitt Inc.*, 3:06-cv-267 (D.N.J.) (TJB) (\$4.9 million class settlement of FLSA and state claims); *Caissie v. BJ's Wholesale Club*, 08-CV-30220 (D. Mass.) (MAP) (\$9.15 million settlement). In 2009, Klafter Olsen & Lesser LLP was co-lead counsel in what is one of the first FLSA misclassification collective actions ever tried to a jury. After the six week trial, plaintiffs prevailed on all points, obtaining a verdict finding that the defendant there, Staples, Inc., had willfully violated the FLSA in failing to pay assistant store managers for hours worked overtime. The jury awarded the 342 collective action members a verdict of \$2.4 million, which the Court doubled to \$4.2 million. KOL acted as the lead counsel in obtaining a \$42 million settlement against Staples, Inc. that resolved the jury award that KOL



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obtained, as well as a number of other cases that constituted MDL-2025, in which was asserted that Staples misclassified assistant store managers as exempt from receiving overtime for hours worked in excess of 40 hours per week. *In re Staples Inc. Wage & Hour Employment Practices Litig.*, No. 08-5746 (D.N.J.) (KSH) (MDL-2025). Recently, KOL was co-lead counsel in settling an assistant store manager case against CVS for \$34 million, which settlement was described by the United States District Judge who approved the settlement as a “magnificent” result. *Nash v. CVS Caremark Corp.*, No. 09-cv-079-M (Order granting final approval, April 9, 2012).

### **Civil Rights Litigation**

Klafter Olsen & Lesser LLP has actively prosecuted a number of lawsuits on behalf of individuals who have had their civil or Constitution rights violated.

In recent years, the Firm’s attorneys have obtained awards in many individual and class actions in which racial or gender discrimination was alleged, including the recent \$24.4 million settlement reached in a case involving historical racial discrimination in the sale of life insurance. In that case, as co-lead counsel, we obtained class certification, defeated the defendant’s attempt to obtain interlocutory appellate review of the certification decision and prevailed against a motion for summary judgment, *Norflet v. John Hancock Life Ins. Co.*, No. Civil No. 3:04cv1099 (D. Conn.).

In recent years, the Firm has also obtained significant recoveries on behalf of individuals who were illegally strip searched when they were arrested for non-serious crimes including a \$7.5 million class action settlement against one New Jersey county (*Hicks v. County of Camden*, Civ. No. 05-1857 (D.N.J.), a \$4.5 million settlement against another (*Suggs v. County of Cumberland*, Civ. No. 06-0087 (D.N.J.) and a \$4.0 million against a third (*Wilson v. Gloucester County*, Civ. No. 06-1368 (D.N.J.). The Firm is now involved in prosecuting such cases across the country. At the final approval hearing of the *Wilson v. Gloucester County* settlement, on March 18, 2010, Judge Irenas of the United States District Court for the District of New Jersey stated on the record that “The court already held that class counsel was adequate in the context of class certification. But more than just adequate, class counsel’s performance in this case has been exemplary.”



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### **Mass Tort and Personal Injury**

The Firm's attorneys have extensive experience in representing victims of hazardous pharmaceutical drugs (such as Rezulin or Fen/Phen), defective medical devices (such as certain of Guidant's implantable defibrillators), and mass food poisonings (such as peanut butter contamination). We have represented not only individuals but also government agencies for reimbursement claims.

Our attorneys have been lead counsel in a number of such cases. One involved multiple LYMERix vaccine class actions which resulted, as a part of the settlement, in the withdrawal of the from the market - perhaps a unique and unprecedented resolution of a pharmaceutical class action - and which also set forth the terms pursuant to which the company could apply to the Food and Drug Administration to seek any reintroduction of the product. *Cassidy v. SmithKline Beecham*, No. 99-10423 (Ct. Common Pleas, PA state court).

In another national mass tort, one of our attorneys, Seth Lesser, has been serving as one of the co-lead counsel *In re Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 05-1708 (DWF/AJB) (D. Minn.), where a \$240 million settlement has been obtained for individuals who faced economic and personal injury from defectively designed implantable defibrillators.

Our lawyers have also acted as the lead New York class counsel in the Fen/Phen diet drug litigation which obtained the first certification under New York law for a medical monitoring class, and acted as the designated New York class counsel in the nationwide multi-billion dollar settlement with American Home Products. We have experience serving on state and federal executive and plaintiffs' steering committees for other mass tort claims and Mr. Lesser has been a co-chair of the American Association for Justice's Food Borne Illness litigation group.



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### **The Firm's Attorneys**

**Jeffrey A. Klafter** has almost thirty years of experience in prosecuting securities and commercial litigation. From 1988 until mid-2003, Mr. Klafter was a partner of Bernstein Litowitz Berger & Grossmann LLP. Early in his career, Mr. Klafter was one of the principal lawyers responsible for the prosecution of over 100 defendants to recoup the losses suffered by the purchasers of municipal bonds issued by the Washington Public Power Supply System when it defaulted on those bonds. That litigation resulted in the recovery of over \$800 million, one of the largest securities fraud settlements in history. Mr. Klafter has also served as sole or co lead counsel in prosecuting numerous securities class actions on behalf of investors in common stock, municipal bonds, convertible debentures and preferred stock in which hundreds of millions of dollars have been recovered on behalf of investors. Among the many notable achievements for which he had sole or shared responsibility are the recovery of \$48 million in *In re Independent Energy PLC Securities Litigation*; the recovery of \$300 million in *In Re: DaimlerChrysler AG Securities Litigation*, the decision of the Second Circuit Court of Appeals reversing the district court's dismissal of plaintiffs' complaint in *In re Scholastic Corp. Securities Litigation* and ultimate settlement of that litigation; the recovery with Mr. Olsen of \$27.1 million in *In re SmarTalk Teleservices Inc. Securities Litigation*, and a significant recovery on behalf of holders of Sun Oil Company preferred stock in litigation over the indenture governing the stock.

Since forming the Firm, Mr. Klafter has also served as special counsel to lead counsel in the *In re Ahold N.V. Securities & ERISA Litigation*, Civil No.: 1:03-MD-01539-CCB (D. Md.) in which \$1.1 billion was recovered on behalf of the class.

Mr. Klafter has also been responsible for the prosecution of innovative and diverse litigation successfully challenging Delaware regulations governing the disposal of solid waste on behalf of waste haulers; the laying of fiber optic cable along railroad rights of way on behalf of adjoining landowners; and efforts to impose the cost of Y2K compliance on businesses and medical practices by suppliers of various computer software.

Mr. Klafter is a member of the Bar of the State of New York, the United States District Court for the Southern District of New York, other



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federal district courts, the Second Circuit Court of Appeals, and the United States Supreme Court. Mr. Klafter is a member of the Securities Law Committee of the Commercial and Federal Litigation Section of the New York State Bar Association; the Class Actions and Derivative Suits Committee of the Litigation Section of the American Bar Association, and is a noted author and lecturer on securities litigation issues.

**Kurt B. Olsen** has more than seventeen years of experience representing plaintiffs and defendants in commercial, Title VII, and securities class action litigation. In September 1997, Mr. Olsen founded The Olsen Law Firm. The Firm focused on uncovering complex accounting schemes before they became public including several actions where the defendant companies were forced to restate their financial results after the Firm filed suit. As a lead counsel, Mr. Olsen successfully prosecuted several prominent federal securities class actions including: *In re SmarTalk Teleservices Inc. Securities Litigation* (\$27.1 million total settlement); *Edwards v. Casino DataSystems, Inc.* (\$5 million settlement); and *Broderick v. PHP Healthcare Corporation.* (\$4.5 million settlement); *In re Ashworth, Inc. Securities Litigation* (\$15.25 million settlement). In *SmarTalk*, the district court recognized the \$15 million settlement with the company's auditor, defendant PricewaterhouseCoopers LLP, as an "extraordinary" recovery.

Prior to founding The Olsen Law Firm, Mr. Olsen was associated with the Washington D.C. office of Kirkland & Ellis where he represented General Motors Corp., Dow Corning Corp., and the Dow Chemical Co. in various products liability actions. He also served as co-trial counsel in *Scott v. Dow Corning, Inc.*, one of only two trial victories in Texas for Dow Corning in the breast implant litigation.

Mr. Olsen is also committed to public service. In October 2007, Maryland Governor Martin O'Malley appointed Mr. Olsen to the Maryland Health Care Commission, an independent regulatory agency whose mission is to plan for health system needs and improve access in a rapidly changing health care environment through programs that serve as models for the nation.

Mr. Olsen is a graduate of the U.S. Naval Academy (B.S. *with Merit* 1984) and the National Law Center, George Washington University (J.D. *with Honors* 1992). During his career in the U.S. Navy, Mr. Olsen served as a Naval Special Warfare Officer assigned to SEAL Team Five in



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Coronado, California. He has traveled extensively in the Middle East and Far East, primarily as a special operations platoon commander. He is a member of the Bar of the District of Columbia and the State of Maryland, and a member of the United States District Court for the District of Columbia.

**Seth R. Lesser** practices in the areas of consumer advocacy, mass torts and wage and hour litigation, primarily on behalf of defrauded consumers, businesses and employees. In addition to handling cases at the trial court level, he also has an active appellate practice. He began his career at a large defense firm and subsequently was a partner at two plaintiff-oriented firms, Bernstein Litowitz Berger & Grossmann LLP and the Locks Law Firm. He joined the Firm in August, 2008.

Mr. Lesser is a graduate of Princeton University, A.B., *summa cum laude* (1983); Oxford University, D.Phil. in Modern History, recipient of a Marshall Scholarship (1985); and Harvard Law School, J.D., *magna cum laude*, where he was an editor of the HARVARD JOURNAL OF INTERNATIONAL LAW and of the HARVARD ENVIRONMENTAL LAW REVIEW (1985). In addition, he was the coxswain of the Oxford Blue Boat in the Oxford-Cambridge Boat Race (1984 & 1985).

Since 1995, Mr. Lesser has primarily represented plaintiffs in class and collective actions and mass tort cases. He has been the lead plaintiffs' counsel in dozens of successful class and/or collective actions in the areas of consumer, privacy, mass tort, employment and securities litigation. The cases where he has served as plaintiffs' counsel have returned hundreds of millions of dollars to clients. Federal Multidistrict Litigation proceedings where he was lead or co-lead counsel have including, among others, MDL-1346 (*In re Amazon-Alexa*) (sole lead); MDL-1352 (*In re Doubleclick*) (co-lead); MDL-1708 (*In re Guidant Implantable Heart Devices*) (co-lead); MDL-1739 (*In re Grand Theft Auto Video Game Consumer Litigation*) (sole lead); MDL-1903 (*In re Pepsico, Inc. Bottled Water Sales Practices*) (sole lead); MDL-2025 (*In re Staples, Inc. Wage & Hour Employment Practices Litig.*) (lead). He has been on numerous MDL Executive/Steering Committees, including, the Executive Committee in MDL-1845 (ConAgra Peanut Butter Products Liability Litigation), and serving as Law & Briefing Co-Chair of the Government Actions Committee in MDL-1657 (Vioxx Products Liability Litigation). Among other things, he was the lead New York class counsel in the Fen/Phen diet drug litigation and in that case obtained the first



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certification under New York law for a medical monitoring class, and was the New York class counsel in the settlement with American Home Products. In recent years, he has particularly handled numerous wage and hour litigations on behalf of employees denied payment of overtime wages. He was also class counsel in *Perez v. Rent-A-Center* (New Jersey State Court) where a \$109 million settlement returned to 100,000 New Jersey consumers over 100% of their out-of-pocket damages.

Mr. Lesser was the National Association of Consumer Advocates' Attorney of the Year in 2005 and is presently Co-Chair of the Board of Directors of that organization. From 1998 through 2001, he served as the representative of the American Council on Consumer Interests to the United Nations. At present, he is on the *Amicus* Committee of the American Association for Justice; is on the Second Circuit Courts Committee of the Federal Bar Council; and is active in the Members Consultative Group of the American Law Institute's Restatement of the Law Third, Restitution and Unjust Enrichment project. He is a member of, *inter alia*, the American Law Institute; the American Bar Association; the Second Circuit Federal Bar Council; the Bar Association of the City of New York; the National Association of Consumer Advocates; the American Association for Justice; and the National Employment Lawyers Association.

Other professional organization appointments have included being the Chair of American Bar Association's Business Law Section's Environmental Litigation Subcommittee (1995-2002); the Co-Chair of the ABA's Business Law Section's Annual Review of Litigation (1995-1998); a member of the New York City Bar Association's Committees on Consumer Affairs (1995-1998) and Federal Courts (1998-2001); a member of the Federal Bar Council's Second Circuit Courts Committee (2006 to date); and Co-Chair of the American Association for Justice's Food-borne Illness Litigation Group (2007 to date). He also was the Chair of the National Association of Securities and Consumer Attorneys Consumer Committee from 2003 to 2005. He was asked to draft revisions to New York State's class action law (2002-2003; Report, 2003), as well as having been involved in the drafting of numerous recommendations, testimony, reports, and other materials for various professional organizations. His election to the American Law Institute was in 2008. In addition, Mr. Lesser is presently on the Editorial Advisory Board of the *Class Action Law Monitor*.

Mr. Lesser is the member of the bars of New York, New Jersey and



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the District of Columbia as well as nine United States District Courts, nine federal Courts of Appeal and the United States Supreme Court.

**Fran L. Rudich** concentrates her practice in complex litigation and class action matters, with a particular emphasis in representing employees in all aspects of employment law, particularly sexual harassment, various issues of discrimination, and cases involving violations of the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act, and state wage and hour statutes. Ms. Rudich's other areas of expertise include consumer class actions, representative actions, and tort actions on behalf of defrauded and injured businesses and people. Ms. Rudich has been the lead attorney in numerous multi-million dollar employment discrimination jury verdicts against major national entities and corporations.

She is a graduate of the University of Massachusetts, 1983 (B.A. *summa cum laude* 1983) and the Hofstra University School of Law (J.D. 1986). She is a member of the bars of the States of New York and Massachusetts as well as several federal courts.

**Michael Palitz** is a recent graduate of Pace University School of Law (J.D. *cum laude*, January 2010), where he served as Editor-in-Chief of the Pace International Law Review.

**Kyra Hild** graduated from her law class in Trinity College Dublin (LL.B., 2006) with a First Class Honours Degree. She received the Entrance Exhibition (merit based scholarship) upon entry to Trinity College Dublin (2002) and was elected a Scholar of that University in 2004. She was Chair of the Free Legal Advice Centres Society at Trinity in the academic year 2005-2006. She also holds an M. Litt., research masters degree (2009) from Trinity College Dublin. She was admitted to the New York Bar in 2009.

Ms. Hild has worked as legal intern in the Judicial Chambers of the International Criminal Tribunal for Rwanda, Tanzania, and as staff attorney at Benjamin N. Cardozo Law School's Human Rights and Genocide Clinic in Manhattan. She worked as advisor at the Permanent Mission of Ireland to the United Nations before joining the Firm.



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